

fw



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/931,498	08/16/2001	Robert G. Gibson	CUS3-BP54	3683
38441	7590	11/04/2005	EXAMINER	
LAW OFFICES OF JAMES E. WALTON, PLLC 1169 N. BURLESON BLVD. SUITE 107-328 BURLESON, TX 76028			VU, STEPHEN A	
			ART UNIT	PAPER NUMBER
			3636	

DATE MAILED: 11/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/931,498

**Applicant(s)**

GIBSON ET AL.

**Examiner**

Stephen A. Vu

**Art Unit**

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 August 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 26-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 26-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Art Unit: 3636

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 26-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Povey (#3,597,764) in view of Rothman (#6,311,330) and Hyman (#3,665,517).

Povey shows a combination seat cushion (64) and leg warmer comprising a bottom having a base portion and an upright skirt portion, a collapsible envelope portion (30) connected at one end to the bottom, a seat cushion (64) connected to an opposing end of the envelope portion, and a means (66) for releasably connecting the seat cushion to the skirt portion. However, the bottom is not water-proof and the envelope portion doesn't have an expandable pleat. Rothman teaches a cover comprising a waterproof base (15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the bottom of Povey's

Art Unit: 3636

invention with a waterproof material as taught by Rothman in order to prevent the bottom of Povey's combination seat cushion and leg warmer from absorbing water.

In addition, Hyman teaches an outerwear comprising pleats (11) to permit freedom of movement without unduly increasing the bulk of the garment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate pleats as taught by Hyman to the envelope of Povey's invention, in order to permit freedom of movement without unduly increasing the bulk of the garment.

Claims 26-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kemp (#2,230,689) in view of Rothman (#6,311,330) and Hyman (#3,665,517).

Kemp shows a combination seat cushion (5) and leg warmer comprising a bottom having a base portion and an upright skirt portion, a collapsible envelope portion (1) connected at one end to the bottom, a seat cushion connected to an opposing end of the envelope portion, and a means for releasably connecting the seat cushion to the skirt portion. However, the bottom is not waterproof and the envelope portion doesn't have an expandable pleat. Rothman teaches a cover comprising a waterproof base (15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the bottom of Kemp's invention with a waterproof material as taught by Rothman in order to prevent the bottom of Kemp's combination seat cushion and leg warmer from absorbing water.

In addition, Hyman teaches an outerwear comprising pleats (11) to permit freedom of movement without unduly increasing the bulk of the garment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to

Art Unit: 3636

incorporate pleats as taught by Hyman to the envelope of Kemp's invention, in order to permit freedom of movement without unduly increasing the bulk of the garment.

### ***Response to Arguments***

Applicant's arguments filed August 29, 2005 have been fully considered but they are not persuasive. The applicant has argued that the prior art of Povey (#3,597,764), Kemp (#2,230,689), Rothman (#6,311,330), and Hyman (#3,665,517) does not show or teaches the applicant's claimed invention. The examiner disagrees with this argument. It is best interpreted that the primary reference of Povey shows a combination seat cushion (64) and leg warmer comprising a bottom having a base portion and an upright skirt portion, a collapsible envelope portion (30) connected at one end to the bottom, a seat cushion (64) connected to an opposing end of the envelope portion, and a means (66) for releasably connecting the seat cushion to the skirt portion. However, the bottom is not water-proof and the envelope portion doesn't have an expandable pleat. The secondary reference, Rothman, teaches a cover comprising a waterproof base (15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to construct the bottom of Povey's invention with a waterproof material as taught by Rothman in order to prevent the bottom of Povey's combination seat cushion and leg warmer from absorbing water.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen A. Vu whose telephone number is 571-272-6862. The examiner can normally be reached on M-F from 8:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3636

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen Vu  
November 1, 2005



Peter M. Cuomo  
Supervisory Patent Examiner  
Technology Center 3600